

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

GILBERTO CANTU,

Petitioner,

vs.

ATTORNEY GENERAL OF THE
STATE OF MONTANA,

Respondent.

CV 20–58–M–DLC–KLD

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings and Recommendation. (Doc. 17.) Judge DeSoto recommends that Gilberto Cantu’s petition be dismissed with prejudice and a certificate of appealability should be denied. (*Id.* at 8–9.) Cantu has not filed any objections.

A party is only entitled to de novo review of those findings to which he or she specifically objects. 28 U.S.C. § 636(b)(1)(C). In the absence of an objection, this Court reviews findings for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error review is “significantly deferential” and exists when the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error, the Court finds none.

Cantu has filed a § 2254 petition challenging his 2019 conviction for criminal possession with intent to distribute in Montana state court. (*See generally* Doc. 5.) Judge DeSoto concluded Cantu's petition was procedurally defaulted and ordered him to show cause why it should not be dismissed. (Doc. 7 at 4.) Cantu has generally responded that he is actually innocent. The Court agrees that Cantu's petition is procedurally defaulted and that he has not demonstrated he is entitled to circumvent this default based on actual innocence. The Court also agrees Cantu has not "made a substantial showing of the denial of a constitutional right" and will decline to issue a certificate of appealability. 28 U.S.C. § 2253(c)(2).

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 17) is ADOPTED IN FULL.

IT IS FURTHER ORDERED that Cantu's petition (Doc. 5) is DISMISSED WITH PREJUDICE.

IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Clerk of Court shall enter a judgment of dismissal by separate document and close the case file.

DATED this 2nd day of September, 2021.



Dana L. Christensen, District Judge
United States District Court